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No. 90-58

In The

Supreme Court of the United States

October Term, 1991

EDWARD FRANCIS SKLODOWSKI, JR., Administrator of the Estate of Edward Francis Sklodowski, III, Deceased,

Petitioner,

vs.

SCOTT PAPER COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals is required to render a written opinion in order to provide a *de novo* review of the District Court's grant of summary judgment based on settled state law.

NON-WHOLLY OWNED SUBSIDIARIES

Respondent Scott Paper Company owns less than 100% of the Voting Securities of the following subsidiaries or affiliates:

Scott Iberica, S.A.

Scott Paper Company de Costa Rica, S.A.

Taiwan Scott Paper Corp.

Thai-Scott Paper Co., Ltd.

Compania Industrial de San Cristobal, S.A.

Desarrollos Dar de Mexico, S.A. de C.V.

Sanyo Scott Company, Limited

Scott Paper Limited

Ssangyong Paper Co., Ltd.

Cabin Bluff Management Co. (a partnership)

Cabin Bluff Partners (a partnership)

Canso Chemicals Limited

Forestal Colcura, S.A.

Forestal e Industrial Santa Fe, S.A.

Forestal y Agricola Monte Aguila Ltd.

Mountain Tree Farm Company

Scott Paper Company has no parent corporation.

TABLE OF CONTENTS

Page

Question Presented i

Non-Wholly Owned Subsidiaries ii

Table of Contents iv

Table of Citations iv

Statutes Involved 2

Counterstatement of the Case 3

Summary of Argument 5

Reasons for Denying the Writ 6

Conclusion 8

TABLE OF CITATIONS

Cases Cited:

Craig v. Lake Asbestos of Quebec, Ltd., 843 F.2d 145 (3d Cir. 1988) 5, 7

Salve Regina College v. Russell, 499 U.S. ____, 113 L. Ed. 190, 111 S. Ct. 1217 (1991) 5, 6, 7, 8

Williams v. Delta Truck Body Co., Inc., 892 F.2d 327 (3d Cir. 1989) 4, 6, 7

Contents

Page

Statutes Cited:

Pennsylvania Workmen's Compensation Act, 77 Pa. S.A. §§ 21, 411(1) and 481(a) 2, 3, 4

28 U.S.C. § 1332 3

Rules Cited:

Supreme Court Rule 10 ..... 6, 8

Internal Operating Procedures of the United States Court of Appeals for the Third Circuit, Chapter 6 7

Third Circuit Rules and Procedures, Rule 12(6)(a) 4, 5

Fed. R. Civ. P. 56(f) 4

Fed. R. App. P. 28(c) 4

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EDWARD FRANCIS SKLODOWSKI, JR., Administrator of the Estate of Edward Francis Sklodowski, III, Deceased,

Petitioner,

vs.

SCOTT PAPER COMPANY,

Respondent,

vs.

ISAAC WATKINS COMPANY, INC.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION FOR RESPONDENT SCOTT PAPER COMPANY

The respondent Scott Paper Company respectfully requests

that this Court deny the petition for writ of certiorari to the United States Court of Appeal for the Third Circuit.

STATUTES INVOLVED

The District Court granted summary judgment in favor of respondent Scott Paper Company, which summary judgment was affirmed by the Court of Appeals, based on the following provisions of Pennsylvania's Workmen's Compensation Act, 77 Pa. S.A. §§ 21, 411(1) and 481(a):

> § 21. "Employer" defined
>
> The term "employer", as used in this act, is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it.
>
> § 411. "Injury", "personal injury", and "injury arising in the course of his employment" defined
>
> (1) The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employe, regardless of his previous physical condition, arising in the course of his employment and related thereto, . . . and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such injury and its resultant effects, and occurring within three hundred weeks after the injury. The term "injury arising in the course of his employment," as used in this article, . . . shall

include all other injuries sustained while the employe is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employe, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employe's presence thereon being required by the nature of his employment.

§ 481. Exclusiveness of remedy . . . .

(a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) [77 Pa. S.A. § 411(1)] . . . .

COUNTERSTATEMENT OF THE CASE

Petitioner instituted this action in the District Court under the court's diversity jurisdiction, 28 U.S.C. § 1332, seeking damages on account of the death of Edward Francis Sklodowski, III. Mr. Sklodowski was supplied to respondent Scott Paper Company ("Scott") by Isaac Watkins Company, Inc. ("IWCO") pursuant to a contract between Scott and IWCO. The purpose of this contract was to supplement Scott's manpower at one of its facilities in connection with renovations Scott was undertaking.

Mr. Sklodowski was killed while performing electrical work at Scott's facility.

After conducting some discovery, Scott filed a motion for summary judgment arguing that Scott was immune from liability to petitioner pursuant to § 481(a) of Pennsylvania's Workmen's Compensation Act, 77 Pa. S.A. § 481(a), because Mr. Sklodowski was Scott's borrowed employee, a type of employee recognized by decades of Pennsylvania case law interpreting the Act. In response, petitioner sought and was granted leave under Rule 56(f) of the Federal Rules of Civil Procedure to take four depositions. Upon completion of the depositions, petitioner responded to Scott's motion for summary judgment, submitting with his response a three-inch thick appendix containing eighteen exhibits consisting of various documentary evidence and excerpts from five depositions. Thereafter, the District Court entered summary judgment in Scott's favor. In connection with that entry, the District Court wrote a ten-page memorandum explaining the basis for its decision. That opinion is set forth in petitioner's appendix to his petition at 4a-11a.

Petitioner appealed the District Court's entry of summary judgment to the Court of Appeals. Thereafter, petitioner and Scott filed briefs. Petitioner elected not to file a reply brief although permitted to do so under Rule 28(c) of the Federal Rules of Appellate Procedure. Both petitioner and Scott stated in their briefs that the scope of the Court of Appeals' review was plenary and cited *Williams v. Delta Truck Body Co., Inc.*, 892 F.2d 327, 329-30 (3d Cir. 1989), for that proposition.

On March 19, 1991 the Court of Appeals, without holding oral argument[1], affirmed the District Court's granting Scott

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1. Rule 12(6)(a) of the Third Circuit Rules and Procedures permits a party (Cont'd)

summary judgment by entering the judgment order contained in petitioner's appendix at 1a-2a. On June 5, 1990, the Court of Appeals denied petitioner's petition for rehearing by the order set forth in petitioner's appendix at 3a.

SUMMARY OF ARGUMENT

The sole case relied upon by petitioner, *Salve Regina College v. Russell*, 499 U.S. ____, 113 L. Ed. 190, 111 S. Ct. 1217 (1991), held that a Court of Appeals may not review a District Court's determination of state law under a standard less probing than that applied to a determination of federal law. In reaching its decision, the Court rejected as inappropriate appellate deference to interpretations of state law made by federal District Court judges of that state.

In this case, there is no indication that the Court of Appeals deferred to the District Court's interpretation of state law or otherwise failed to fully review petitioner's claims on appeal. More importantly and as recognized in *Salve Regina College*, the Court of Appeals for the Third Circuit, well in advance of rendering its decision in this action, had held that District Court determinations of state law are subject to plenary review. *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 148 (3d Cir. 1988). Moreover, the Third Circuit Court of Appeals had also previously held that grants of summary judgment are subject to

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to an appeal to file a statement with the court setting forth reasons why he or she thinks oral argument should be heard. Petitioner filed no such statement. Rule 12(6)(a) further provides that oral argument will not be held where "the panel, after examination of the briefs and records, shall be unanimously of the opinion that oral argument is not needed". Oral argument is not needed where "the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument". *Id.*

plenary review. *See Williams v. Delta Truck Body Co.*, 892 F.2d 327, 329-30 (3d Cir. 1989). Lastly, petitioner does not persuasively argue that his petition raises any of the special and important reasons for this Court to take jurisdiction as delineated in Rule 10 of the Rules of this Court or even a reason similar to those reasons. Accordingly, petitioner's petition should be denied.

REASONS FOR DENYING THE WRIT

In his petition, petitioner argues that the disposition of his appeal by the Court of Appeals by use of a judgment order does not provide adequate assurance that it had engaged in a meaningful *de novo* review of the District Court's grant of summary judgment in Scott's favor. Such a proposition is unfounded in law and is contradicted by the Court of Appeals' previous opinions which held that (1) reviews of grants of summary judgment are plenary and (2) federal appellate courts should not defer to interpretations of state law made by federal District Court judges sitting in that state. Nor does petitioner persuasively offer any reason of the import delineated in Rule 10 of the Rules of this Court. Accordingly, the petition should be denied.

The sole case relied upon by petitioner is *Salve Regina College v. Russell*, 499 U.S. ____, 113 L. Ed. 2d 190, 111 S. Ct. 1217 (1991). In that case the only issue resolved by this Court was the following: "whether a federal court of appeals may review a district court's determination of state law under a standard less probing than that applied to a determination of federal law." 111 S. Ct. at 1219. In reaching its decision, this Court rejected as inappropriate a custom of some federal appellate courts of deferring to interpretations of state law by federal District Court judges sitting in that state. That custom had been based on the notion that federal district judges were more knowledgeable of the law of the state in which they sat and were, therefore, more apt at construing that state's law. *Id.* at 1224-25. In rendering

its decision, this Court did *not* hold that in conducting a *de novo* review of a District Court's decision based on state law the appellate court is required to render a full, written opinion.[2] Thus, the use of a judgment order[3] by the Court of Appeals does not conflict with this Court's decision in *Salve Regina College* as petitioner argues.

In this case, there is no reason to believe that the Court of Appeals deferred in any way to the District Court's determination of state law. To the contrary, the Court of Appeals had held prior to deciding this action that District Court determinations of state law are subject to plenary review by the appellate court. *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 148 (3d Cir. 1988). Moreover, the Court of Appeals had also previously held that grants of summary judgment are subject to plenary review as both petitioner and Scott stated in their appellate briefs. See *Williams v. Delta Truck Body Co., Inc.*, 892 F.2d 327, 329-30 (3d Cir. 1989). We must presume the Court of Appeals followed its prior opinions in this instance. The mere fact that the Court of Appeals affirmed the entry of summary judgment in Scott's favor by use of a judgment order in no way suggests that the court failed to fully review petitioner's contentions.[4] In fact, the

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2. This Court did emphasize the need to encourage the District Courts "to explicate with care the basis for its legal conclusions". 111 S. Ct. at 1222. Of course in this matter the District Court did just that in its ten-page opinion.

3. Under the Internal Operating Procedures of the United States Court of Appeals for the Third Circuit, Chapter 6, a judgment order may be entered "when the panel unanimously determines to affirm the judgment or order of the district court . . . and determines that a written opinion will have no precedential or institutional value."

4. The Court of Appeals had before it the briefs of petitioner and Scott, the joint appendix submitted on appeal, the ten-page decision of the District Court which delineated its reasons for granting summary judgment and the filings

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judgment order explicitly states the Court of Appeals considered "all contentions raised by [petitioner]".

Nor does petitioner offer any sufficient reason which rises to the level which merits this Court's consideration of the matter. Petitioner neither persuasively invokes any of the "special and important reasons" set forth in Rule 10 of the Rules of this Court[5] nor persuasively argues any other reason which rises to that level. Accordingly, petitioner's petition should be denied.

CONCLUSION

For these reasons and based on the authorities set forth above, respondent Scott Paper Company respectfully requests that the Court deny petitioner's petition for writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Scott Paper Company

(Cont'd)
by both petitioner and Scott contained in the record in connection with Scott's motion for summary judgment including the three-inch submission by petitioner which included numerous exhibits and excerpts from five depositions.

5. Although petitioner argues that the Court of Appeals' entry of a judgment order conflicts with this Court's ruling in *Salve Regina College*, as discussed above, no such conflict exists.